

overall opinion cannot be expressed, the reasons therefor shall be stated.

Bank written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank System means the Federal Home Loan Bank System, consisting of the twelve Banks and the Office of Finance.

FHFA means the Federal Housing Finance Agency.

Financing Corporation or *FICO* means the Financing Corporation established and supervised by the FHFA under section 21 of the Bank Act (12 U.S.C. 1441).

Office of Finance or *OF* has the same meaning as set forth in § 1273.1 of this chapter.

§ 1274.2 Audit requirements.

(a) Each Bank, the OF and the FICO shall obtain annually an independent external audit of and an audit report on its individual financial statement.

(b) The OF audit committee shall obtain an audit and an audit report on the combined annual financial statements for the Bank System.

(c) All audits must be conducted in accordance with generally accepted auditing standards and in accordance with the most current government auditing standards issued by the Office of the Comptroller General of the United States.

(d) An independent, external auditor must meet at least twice each year with the audit committee of each Bank, the audit committee of OF, and the FICO Directorate.

(e) FHFA examiners shall have unrestricted access to all auditors' work papers and to the auditors to address substantive accounting issues that may arise during the course of any audit.

§ 1274.3 Requirement to provide financial and other information to the FHFA and the OF.

In order to facilitate the preparation by the OF of combined Bank System annual and quarterly reports, each Bank shall provide to the OF in such form and within such timeframes as the FHFA or the OF shall specify, all financial and other information and assistance that the OF shall request for that purpose. Nothing in this section shall contravene or be deemed to circumscribe in any manner the authority of the FHFA to obtain any information from any Bank related to the preparation or review of any financial report.

Dated: July 29, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590-AA27

Duty To Serve Underserved Markets for Enterprises

AGENCY: Federal Housing Finance Agency.

ACTION: Advance notice of proposed rulemaking and request for comment.

SUMMARY: Section 1129 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to establish a duty for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises) to serve three underserved markets—manufactured housing, affordable housing preservation, and rural areas—in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing in those markets. Section 1335 of the Safety and Soundness Act, as amended, requires the Federal Housing Finance Agency (FHFA), beginning in 2010, to establish a manner for: evaluating whether and to what extent the Enterprises have complied with the duty to serve underserved markets; and rating the extent of compliance. To assist FHFA in rulemaking to implement the duty to serve underserved markets, FHFA seeks comment on the characteristics and types of Enterprise transactions and activities that should be considered and how such transactions and activities should be evaluated and rated, for purposes of determining the Enterprises' performance of the duty to serve underserved markets.

DATES: Written comments must be received on or before: September 18, 2009.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590-AA27, by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is:

Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA27, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA27, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to RegComments@fhfa.gov. Please include "RIN 2590-AA27" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Please include "RIN 2590-AA27" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Nelson Hernandez, Senior Associate Director, Housing Mission and Goals, (202) 408-2819, Brian Doherty, Acting Manager, Housing Mission and Goals-Policy, (202) 408-2991, or Paul Manchester, Acting Manager, Housing Mission and Goals-Quantitative Analysis, (202) 408-2946 (these are not toll-free numbers); Lyn Abrams, Attorney-Advisor, (202) 414-8951, Kevin Sheehan, Attorney-Advisor, (202) 414-8952, or Sharon Like, Associate General Counsel, (202) 414-8950 (these are not toll-free numbers), Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the Advance Notice of Proposed Rulemaking. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to

inspect comments, please call the Office of General Counsel at (202) 414-3751.

II. Background

A. Establishment of FHFA

Effective July 30, 2008, Division A of HERA, Public Law 110-289, 122 Stat. 2654 (2008), amended the Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*, and created FHFA as an independent agency of the Federal government.¹ HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises from the Office of Federal Housing Enterprise Oversight (OFHEO) to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the affordable housing goals for the Enterprises from the Department of Housing and Urban Development (HUD) to FHFA. HERA provides for the abolishment of OFHEO one year after the date of enactment. FHFA is responsible for ensuring that the Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See* 12 U.S.C. 4513.

Section 1302 of HERA provides, in part, that all regulations, orders and determinations issued by the Secretary of HUD (Secretary) with respect to the Secretary's authority under the Safety and Soundness Act, the Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*, and the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*, (Charter Acts), shall remain in effect and be enforceable by the Secretary or the Director of FHFA, as the case may be, until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. The Enterprises continue to operate under regulations promulgated by OFHEO and HUD until FHFA issues its own regulations. *See* HERA at section 1302, 122 Stat. 2795; 12 U.S.C. 4603.²

The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purpose of

establishing secondary market facilities for residential mortgages. *See* 12 U.S.C. 1451, 1716. Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may provide less of a return than the Enterprises' other activities), and promote access to mortgage credit throughout the nation. *Id.*

B. Duty To Serve Underserved Markets

The Safety and Soundness Act provides that the Enterprises "have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families." 12 U.S.C. 4501(7). Section 1129 of HERA amended section 1335 of the Safety and Soundness Act to establish a duty for the Enterprises to serve three specified underserved markets, in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for certain categories of borrowers in those markets. 12 U.S.C. 4565. Specifically, the Enterprises are required to provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families with respect to manufactured housing, affordable housing preservation, and rural markets.³ *Id.* In addition, section 1335 requires FHFA to establish, by regulation effective for 2010 and each subsequent year, a method for evaluating and rating the Enterprises' performance of the duty to serve underserved markets. *Id.* sec. 4565(d). Furthermore, FHFA is required to report annually to Congress on the Enterprises' performance of the duty to serve underserved markets. *Id.* A description of the duty to serve provisions and issues for consideration are set forth below.

III. Duty To Serve Provisions

A. Overview

The duty to serve underserved markets is separate from and additional to the Enterprises' affordable housing goals. Mortgage purchases that contribute to the affordable housing

goals may, under appropriate circumstances, also be considered for the duty to serve underserved markets. In addition, an activity or transaction may be considered for more than one underserved market. The rules for determining which types of mortgage purchases receive credit for purposes of the affordable housing goals could also be used to determine which types of mortgage purchases would be considered for purposes of the duty to serve underserved markets. FHFA seeks comment on whether there are any categories of mortgage purchase transactions for which the Enterprises receive housing goals credit that should not be considered for the duty to serve.

The affordable housing goals regulation applicable to the Enterprises prohibits housing goals credit for "HOEPA mortgages"⁴ and mortgages with unacceptable terms or conditions or resulting from unacceptable practices. *See* 24 CFR 81.2, 81.16(c)(12); proposed 12 CFR 1282.2, 1282.16(c)(12) (74 FR 20236 (May 1, 2009)). Purchases of these types of mortgages would be ineligible for consideration under the duty to serve underserved markets. Likewise, Enterprise purchases of mortgages that do not conform with the interagency "Statement on Subprime Lending" and the "Interagency Guidance on Nontraditional Mortgage Products Risk"⁵ would not be considered.

The duty to serve underserved markets is not an independent source of program authority for the Enterprise, and activities or transactions conducted in furtherance of this duty must be consistent with the Enterprise's Charter Act powers and limitations. In addition, any activity undertaken pursuant to the duty to serve must be consistent with the Safety and Soundness Act, as amended, the safe and sound operation of the Enterprise, and the public interest.

FHFA invites comment on the issues discussed above.

B. Underserved Markets

1. Manufactured Housing

Section 1335 of the Safety and Soundness Act, as amended, requires the Enterprises to "develop loan products and flexible underwriting guidelines to facilitate a secondary

¹ *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

² On May 1, 2009, FHFA issued a proposed rule to adopt portions of 24 CFR part 81 in new 12 CFR part 1282 and to adjust the levels of the Enterprises 2009 affordable housing goals to levels consistent with current market conditions. *See* 74 FR 20236 (May 1, 2009).

³ The terms "very low-income", "low-income" and "moderate-income" are defined in 12 U.S.C. 4502.

⁴ "HOEPA" refers to the Home Ownership Equity Protection Act.

⁵ *See* Office of Federal Housing Enterprises Oversight, "OFHEO Director James B. Lockhart Commends GSEs on Implementation of Subprime Mortgage Lending Guidance," News Release (Sept. 10, 2007), available at <http://www.fhfa.gov/webfiles/1608/LockhartCommendsGSEsSubprime91007.pdf>.

market for mortgages on manufactured homes for very low-, low- and moderate-income families.” 12 U.S.C. 4565(a)(1)(A). A “manufactured home” is a structure, transportable in one or more sections, which is built on a permanent frame and is designed to be used as a dwelling when connected to the required utilities. *See* 12 U.S.C. 5402. FHFA specifically invites comment on three aspects of the manufactured housing market further discussed below: Manufactured home parks; personal property loans; and land-home and real estate manufactured housing loans.

Manufactured Home Parks. Many manufactured home residents site their homes in manufactured home parks and rent the underlying land. Some manufactured home parks are investor-owned and others are resident-owned. Fannie Mae and Freddie Mac currently purchase loans secured by manufactured home parks. FHFA seeks comment on whether and how these transactions should be considered under the duty to serve the manufactured housing market and on the types of flexibility the Enterprises could add to their underwriting guidelines to facilitate financing these transactions. FHFA also solicits comment on whether there should be differences in how resident-owned parks and investor-owned parks are treated for purposes of the duty to serve the manufactured housing market.

Personal Property Loans.⁶ The Safety and Soundness Act, as amended, provides that FHFA may consider loans secured by both real and personal property in evaluating whether the Enterprises have complied with the duty to serve the manufactured housing market. 12 U.S.C. 4565(d)(3). In some jurisdictions manufactured homes are financed as personal property, and the loan to the homebuyer is secured by a lien only on the manufactured home. Neither Enterprise currently purchases personal property loans on manufactured housing on a flow basis. FHFA seeks comment on whether Enterprise purchases of manufactured housing loans secured by personal property should be considered for purposes of the duty to serve the manufactured housing market. FHFA also requests comment on whether there are consumer protection laws or standards, in addition to those mentioned above, that should apply to

⁶In some jurisdictions, personal property loans on manufactured homes are known as “chattel loans.”

personal property loans on manufactured homes.

Land-Home and Real Estate Manufactured Housing Loans. “Land-home” manufactured housing loans and “real estate” manufactured housing loans provide financing to the homebuyer for both the manufactured home and the underlying land. FHFA seeks comment on the types of flexibility the Enterprises could add to their underwriting guidelines to facilitate financing for land-home and real estate loans.

FHFA requests comment on the relative advantages and disadvantages to borrowers of personal property loans, land-home loans, and real estate loans and on appropriate definitions for these terms. FHFA also seeks comment on the safety and soundness considerations of Enterprise purchase or guarantee of these various loan types, and on how Enterprise leadership under the duty to serve requirements may provide greater standardization and liquidity to the market and protection to borrowers.

2. Affordable Housing Preservation

Under the Safety and Soundness Act, as amended, the Enterprises are required to develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income borrowers, including housing projects subsidized under:

(i) Section 8 of the Housing Act of 1937 (project-based and tenant-based rental assistance housing programs) (42 U.S.C. 1437f);

(ii) Section 236 of the National Housing Act (rental and cooperative housing for lower income families) (12 U.S.C. 1715z–1);

(iii) Section 221(d)(4) of the National Housing Act (housing for moderate-income and displaced families) (12 U.S.C. 1715l);

(iv) Section 202 of the Housing Act of 1959 (supportive housing program for the elderly) (12 U.S.C. 1701q);

(v) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (supportive housing program for persons with disabilities) (42 U.S.C. 8013);

(vi) Title IV of the McKinney-Vento Homeless Assistance Act (only permanent supportive housing projects subsidized under such programs) (42 U.S.C. 11301 *et seq.*);

(vii) Section 515 of the Housing Act of 1949 (rural rental housing program) (42 U.S.C. 1485);

(viii) Low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42); and

(ix) Comparable State and local affordable housing programs. 12 U.S.C. 4565(a)(1)(B).

Some of the housing preservation programs listed above are voucher, capital advance or grant programs rather than mortgage origination programs, and the Enterprises’ assistance may fall outside of their traditional role of purchasing, securitizing and guaranteeing mortgage loans. Moreover, compliance with the duty to assist with affordable housing preservation is not dependent on whether the Enterprise assists each enumerated program each year, because the needs and opportunities in some programs might change from year to year. FHFA seeks comment on how the Enterprises could assist these programs in meaningful and measurable ways.

The housing programs enumerated above are not exhaustive, and the Enterprises are not limited to assisting these programs as their sole means of fulfilling their duty to serve the affordable housing preservation market. For example, HUD’s Neighborhood Stabilization Program provides grants to State and local governments to acquire and redevelop foreclosed properties for the purpose of stabilizing communities that have suffered from home foreclosures and abandonment. FHFA requests comment on whether Enterprise assistance in connection with this program should be considered for the duty to serve the affordable housing preservation market and how the Enterprises might render assistance. FHFA also seeks comment on other State and local affordable housing programs, including foreclosure prevention programs, that could be considered for the duty to serve the affordable housing preservation market.

3. Rural Markets

The Safety and Soundness Act, as amended, requires the Enterprises to “develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas.” 12 U.S.C. 4565(a)(1)(C).

Definition of “Rural Area”. A clear delineation of which areas are rural⁷ is necessary to implement the duty to serve rural markets. Three definitions

⁷The affordable housing goals regulation defines “rural areas” in connection with the underserved areas affordable housing goal. *See* 24 CFR 81.2, proposed 12 CFR 1282.2 (74 FR 20236 (May 1, 2009)). Beginning on January 1, 2010, this definition will no longer be in effect because section 1128 of HERA replaces the previous housing goals established by the Safety and Soundness Act of 1992 with new housing goals. *See* 12 U.S.C. 4561 through 4563.

are set forth below for comment, and FHFA invites suggestions for other definitions.

The first definition would be based on classifications used by the U.S. Census Bureau for the 2000 census and would distinguish between urban and rural areas.⁸ Urban areas are classified as all territory, population, and housing units located within “urbanized areas” and “urban clusters.”⁹ In general, urbanized areas must have a core with a population density of 1,000 persons per square mile and may contain adjoining territory with at least 500 persons per square mile. “Urban clusters” have at least 2,500 but less than 50,000 persons. Rural areas are classified as all territory

located outside of urbanized areas and urban clusters.¹⁰

The second definition would define “rural areas” as all counties assigned a U.S. Department of Agriculture (USDA) Rural-Urban Continuum code¹¹ (RUC code), which the USDA uses to classify rural areas. These codes are available for all U.S. counties and for municipios (county equivalents) in Puerto Rico. Because data on other U.S. territories, including Guam and the Virgin Islands, is lacking, FHFA could regard these territories as “rural areas.” A disadvantage of using the RUC code is that because designations based on RUC codes are county-based, these designations could encompass both urban and rural areas, as occurs with

very large counties west of the Mississippi River.

The third definition would combine two different designations, one used by the U.S. Census Bureau and one used by the USDA. Under this two-pronged definition, all census tracts designated by the U.S. Census Bureau as “nonmetropolitan” would be considered rural areas, as would all census tracts outside of urbanized areas and urban clusters, as designated by USDA’s Rural-Urban Commuting Area¹² code (RUCA code). The number of census tracts that would be considered rural areas under this definition is indicated by the shaded cells in the table below.¹³

RUCA Code	Metropolitan Tracts	Nonmetropolitan Tracts
Urbanized Areas (UA)	44,822	61
Urban Clusters (UC)	1,556	4,985
Not a UA or UC	6,690	7,208

Using this definition, 29 percent of the census tracts in the 50 States would be rural areas. It would also capture 27 percent of the census tracts regarded as “underserved areas” under the affordable housing goals regulation applicable to the Enterprises. See 24 CFR 81.2; proposed 12 CFR 1282.2 (74 FR 20236 (May 1, 2009)). One drawback to this approach is that USDA does not plan to extend the RUCA code to Puerto Rico until at least 2012, and RUCA codes are not assigned to census tracts in the other U.S. territories. FHFA could fill this gap by using the RUC code described above to augment the RUCA code in Puerto Rico and other U.S. territories, or FHFA could create its own estimate of the RUCA code for these areas.

The definitions discussed above would cover most, but not all, Tribal lands. Accordingly, FHFA seeks comment on whether the definition of “rural areas” should include all Tribal lands.

Rural Transactions. FHFA seeks comment on the types of transactions and activities that should receive consideration toward the duty to serve rural markets, and on the types of flexibility the Enterprises could add to their underwriting guidelines to assist this market. In addition, while rural markets are served by a variety of Federal programs, principally through the USDA, FHFA seeks comment on opportunities available for the Enterprises to assist private sector initiatives for rural housing.

C. Evaluation of Performance

1. Evaluation Criteria

In determining whether the Enterprises have complied with the duty to serve underserved markets, the Safety and Soundness Act, as amended, requires FHFA to separately evaluate and rate the Enterprise’s performance for each of the three underserved markets based on four specific criteria, which are discussed below. 12 U.S.C. 4565(d). The Enterprises’ performance

under the three underserved markets may vary significantly from year to year because the needs and opportunities of one market may require more attention and resources than the needs of another market. Accordingly, the method for evaluating the Enterprises’ performance of the duty to serve underserved markets should be sufficiently flexible to account for these variations in market needs and opportunities.

Loan Product Test. The first criterion, referred to here as the “Loan Product Test,” requires evaluation of the Enterprise’s “development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each” underserved market. *Id.* sec. 4565(d)(2)(A). FHFA invites comment on the types of loan products, underwriting flexibility and innovative approaches the Enterprises could develop to serve each of the three underserved markets.

⁸ See Appendix A—Census 2000 Geographic Terms and Concepts A–22, available at <http://www.census.gov/geo/www/tiger/glossry2.pdf>.

⁹ *Id.* For a discussion of urbanized areas and urbanized clusters, see generally, U.S. Department of Agriculture, “Measuring Rurality: What is Rural?” (Mar. 22, 2007), available at <http://www.ers.usda.gov/Briefing/Rurality/WhatIsRural/>.

¹⁰ See Census 2000, *supra* note 8.

¹¹ See U.S. Department of Agriculture, Measuring Rurality: Rural-Urban Continuum Codes (Updated Apr. 28, 2004), available at <http://www.ers.usda.gov/Briefing/Rurality/RuralUrbanCon/>.

¹² See <http://www.ers.usda.gov/briefing/Rurality/RuralUrbanCommunitingAreas/>.

¹³ This table is constructed from data available from the Office of Management and Budget at <http://www.whitehouse.gov/omb/assets/omb/>

[bulletins/fy2009/09-01.pdf](http://www.census.gov/geo/www/relate/rel_tract.html), the U.S. Census Bureau at http://www.census.gov/geo/www/relate/rel_tract.html, and the USDA at <http://www.ers.usda.gov/briefing/Rurality/RuralUrbanCommunitingAreas/>. In order to make a direct comparison to the USDA data, which excludes census tracts for Guam, the Virgin islands, and Puerto Rico, these census tracts were not included in the table.

Outreach Test. The second criterion, referred to here as the “Outreach Test,” requires evaluation of “the extent of outreach [by the Enterprises] to qualified loan sellers and other market participants” in each of the three underserved markets. *Id.* sec. 4565(d)(2)(B). FHFA seeks comment on the types of activities or programs in which the Enterprises could engage that would satisfy this Test, and on how FHFA could objectively measure the Enterprises’ outreach.

Purchase Test. The third criterion, referred to here as the “Purchase Test,” requires FHFA to consider “the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the [E]nterprise.” *Id.* sec. 4565(d)(2)(C). The provision further states that FHFA “shall not establish specific quantitative targets nor evaluate the [E]nterprises based solely on the volume of loans purchased.” *Id.* FHFA requests comment on how to implement the Purchase Test consistent with this restriction and comment on any non-quantitative evaluation methods that would be appropriate. In addition, FHFA seeks comment on whether to measure the Enterprises’ mortgage purchases by number of units financed, number of mortgages purchased, or unpaid principal balance.¹⁴ FHFA further requests comment on the advantages and disadvantages of using each of these methods of measurement, and on the appropriateness of the different methods for different types of transactions.

Grants Test. The fourth criterion, referred to here as the “Grants Test,” requires evaluation of “the amount of investments and grants in projects which assist in meeting the needs of such underserved markets.” 12 U.S.C. 4565(d)(2)(D). FHFA seeks comment on types of investments and grants the Enterprises could make that could be considered under this Test. FHFA also seeks comment on methods available for evaluating the Enterprises’ performance in making the grants and investments.

¹⁴ The Enterprises’ performance under the affordable housing goals is measured using dwelling units, mortgages or unpaid principal balance. See 24 CFR 81.12 through 81.14; proposed 12 CFR 1282.12 through 1282.14 (74 FR 20236 (May 1, 2009)).

2. Sizing the Market

The Purchase Test requires that the volume of loans purchased in each underserved market be evaluated “relative to the market opportunities available to the [E]nterprise.” 12 U.S.C. 4565(d)(2)(C). FHFA invites comment on how to estimate the size of the manufactured housing, affordable housing preservation, and rural markets. FHFA further invites comment on whether there are categories of mortgages that should be excluded from the market size because the mortgages are unavailable for purchase.

If market size estimation is not possible, the Enterprises’ performance in the specific underserved market could be evaluated based on their purchases in that market in recent previous years, although this approach would not be available for the 2010 evaluation year. FHFA seeks comment on this approach.

3. Evaluating Compliance

In order to evaluate the Enterprises’ performance under the duty to serve underserved markets, FHFA is considering developing a rating method similar to the method used to determine whether a financial institution has met the requirements under the Community Reinvestment Act of 1977 (CRA). See 12 U.S.C. 2901 *et seq.*; 12 CFR parts 25, 228, 345, and 563e. For each underserved market, the Enterprises’ performance would be evaluated based on the four criteria described above, with an overall rating for each underserved market of Outstanding, Satisfactory, Needs to Improve or Noncompliance. These terms would be defined in the regulation.

One way to implement this approach would be to devise a rating scheme in which achievements or receipt of a certain number of points would result in a particular rating.¹⁵ The Enterprise’s rating in a particular underserved market would be a combination of the ratings on each of the four Tests.

The four Tests need not be given equal consideration. For example, the Outreach Test might be weighted less than the Loan Product or Purchase

¹⁵ See generally *Notice, Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment*, 74 FR 498, 526–527 (Jan. 6, 2009), available at <http://edocket.access.gpo.gov/2009/pdf/E8-31116.pdf>.

Tests, because it results in less tangible benefits to the markets served and may require less effort and devotion of resources by the Enterprise. Furthermore, FHFA could weigh the four Tests differently across the three underserved markets. For example, the Purchase Test might receive more consideration for the manufactured housing market than for the affordable housing preservation market. The ratings would also take into consideration the overall effort and effectiveness of the Enterprise’s service to the underserved market, its capital and portfolio positions, and the condition of the particular underserved market, which could vary from year to year.

FHFA seeks comment on the evaluation methodology discussed above and invites descriptions of other types of evaluation or rating methodologies that may be feasible.

D. Reporting Requirements

FHFA would require annual reports from the Enterprises on their performance of the duty to serve underserved markets. FHFA anticipates that part of the report would be narrative and part would be summary statistical information, supported by submission of appropriate transaction-level data. The narrative portion would likely include discussions of the Enterprise’s performance in each of the three underserved markets. Except for purchases of single-family mortgages, a complete listing and summary of each transaction for which the Enterprise seeks credit would likely be required. In addition, the Enterprise would certify to the accuracy of the information submitted. FHFA invites comment on specific requirements for the contents of the report.

IV. Request for Comment

FHFA invites comment on all of the issues discussed above, and will consider all comments received in developing a proposed rule to implement the duty to serve underserved markets.

Dated: July 28, 2009.

James B. Lockhart III,
Director, Federal Housing Finance Agency.
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